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No. 84-249

In the Supreme Court of the United States

October Term, 1984

ROGER L. SPENCER AND SHIRLEY L. SPENCER,
PETITIONERS

v.

SOUTH CAROLINA TAX COMMISSION, CHARLES N.
PLOWDEN, IN HIS CAPACITY AS A MEMBER AND
AS THE CHAIRMAN OF THE SOUTH CAROLINA TAX
COMMISSION, ROBERT C. WASSON, IN HIS
CAPACITY AS A MEMBER OF THE SOUTH
CAROLINA TAX COMMISSION AND JOHN T.
WEEKS, IN HIS CAPACITY AS A MEMBER OF THE
SOUTH CAROLINA TAX COMMISSION,
RESPONDENTS

**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA**

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II.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

Respondents' brief in opposition to the petition for certiorari asserts a number of fallacious arguments.

1. Respondents contend, at pages 5 and 6 of their brief, that the Tax Injunction Act, 28 U.S.C. § 1341, and the principle of comity generally permit "a state to handle its own fiscal affairs unimpeded by federal causes of action." This contention is wrong. Section 1341 and comity do not provide state courts an exemption from federal causes of action. They only limit the power of federal courts.

Rosewell v. LaSalle National Bank, 450 U.S. 514, 101 S. Ct. 1221 (1981), shows that respondents' interpretation of § 1341 is erroneous. In Rosewell this

Court stated that the Tax Injunction Act simply "transfers" a class of federal claims to state courts as long as state procedures are adequate. There is no hint in that case that Congress exempted state courts from any federal claim. Id. 450 U.S. at 515 n.19, 101 S. Ct. at 1230 n.19. The Court made it clear that under § 1341, to avoid federal court interference, a state must afford "'full protection to ... federal rights.'" Id. 450 U.S. at 512-513, 101 S. Ct. at 1229, quoting from Hillsborough v. Cromwell, 326 U.S. 620, 625, 66 S. Ct. 445, 449 (1946). In Rosewell, this Court found that the Illinois state court procedures under consideration were adequate because there was "no question" that the state courts would "hear and decide any federal claim" including any claim of a "federal

right" to receive interest on taxes withheld. Id. at 450 U.S. 515, 517, 101 S. Ct. 1230, 1231.¹

Similarly, Fair Assessment in Real Estate v. McNary, 454 U.S. 100, 102 S. Ct. 177 (1981), shows that respondents also misconstrue the principle of comity. Respondents contend that it would directly contradict McNary "to have a federal cause of action forced upon the state judicial system." Respondents' brief at 6. On the contrary, McNary acknowledges that states are exempt by virtue of comity from federal court interference in matters of taxation only "'where the federal rights of the persons [involved can] ... otherwise be preserved

¹It was clear in Rosewell that the taxpayers could have brought a § 1983 action in state court. 450 U.S. at 511 n.14, 101 S. Ct. at 1228 n.14.

unimpaired.'" 100 U.S. at 109, 102 S. Ct. at 182, quoting Boise Artesian Water Co. v. Boise City, 213 U.S. 276, 282, 29 S. Ct. 426, 428 (1909). McNary, like Rosewell, acknowledges that state courts are expected to enforce federal rights even when state taxation is involved.

McNary did not exempt state courts from § 1983 actions; in fact, it discussed the adequacy of state remedies and expressly noted that the plaintiff in that case could assert a § 1983 action in state court. 100 U.S. at 116-117, 102 S. Ct. at 186. McNary also acknowledged implicitly that § 1983 provides a federal right to certain remedies. The Court said that "by its terms [§ 1983] gave a federal cause of action to prisoners, taxpayers, or anyone else who was able to prove that his constitutional or federal

rights had been denied by any State." [emphasis added]. 100 U.S. at 103-104, 102 S. Ct. at 179. Section 1983, in conjunction with § 1988, also provides a federal right to attorney's fees. Maine v. Thiboutot, 448 U.S. 1, 11 and n.12, 100 S. Ct. 2502, 2508 and n.12 (1980). The state courts of South Carolina have wrongly denied the Spencers that right.

2. Respondents also contend that the lower courts' refusal to entertain the Spencers' § 1983 claim is justified by the exhaustion of state remedies principle proposed in Mr. Justice Brennan's concurring opinion in McNary, 100 U.S. at 133-137, 102 S. Ct. at 194-197. Respondents' brief at 6-7. Respondents, however, misconstrue Justice Brennan's opinion. That opinion concluded only that § 1341 implicitly requires exhaus-

tion of state administrative remedies, not state judicial remedies. 100 U.S. at 134 n.22, 102 S. Ct. at 195 n.22. The Spencers have exhausted their administrative remedies, and respondents do not contend otherwise.

3. On page 4 of respondents' brief, the respondents contend that the South Carolina court applied "well accepted law" in refusing to entertain the Spencers' claims under §§ 1983 and 1988. Respondents insist that the existence of remedies under state law justifies the state court's refusal to vindicate the Spencers' right to attorney's fees under §§ 1983 and 1988. Respondents' brief at 5. None of the decisions on which the respondents rely, however, supports or even considers the respondents' argument.

Three of the decisions invoked by

the respondents, Douglas v. New York, N.H. & H.R.R., 279 U.S. 377, 49 S. Ct. 355 (1929), Missouri ex rel. Southern Railway v. Mayfield, 340 U.S. 1, 71 S. Ct. 1 (1950) and Herb v. Pitcairn, 324 U.S., 117, 65 S. Ct. 459 (1945), involved situations where the plaintiff had sought to bring a federal claim into a state court which lacked jurisdiction over the claim because of the residence of the parties or the place where the claim arose. In each case this Court recognized that a state court is entitled to refuse to hear a federal claim when the court's jurisdiction is inadequate. The other case, Kansas City Southern R. Co. v. United States, 282 U.S. 760, 51 S. Ct. 304 (1931), held only that a district court may stay a lawsuit attacking an order of the Interstate Commerce Commis-

sion while another district court resolves an identical issue in another lawsuit. One of the cases on which respondents rely, Herb v. Pitcairn, supra, in fact acknowledges that a state court has a duty to "take cognizance" of a federal cause of action when "its ordinary jurisdiction" is appropriate and that state courts are not free to discriminate against federal claims. 324 U.S. at 120, 123, 65 S. Ct. at 460-461, 462.

Despite respondents' arguments to the contrary at page 8 of respondents' brief, the decision below is clearly contrary to the opinions of this Court discussed at pages 24-29 of the petition for certiorari. The respondents' contention that Congress has authorized states to reject § 1983 suits seeking tax refunds is based on respondents' erroneous interpretation of § 1341 discussed earlier in

section 1 of this brief above. By refusing to award the attorney's fees to which the Spencers are entitled under §§ 1983 and 1988, the state court below has clearly discriminated against the Spencers' federal rights.²

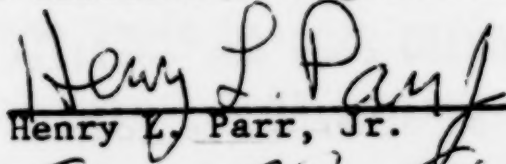
²On page 9 of respondents' brief, respondents cite California v. Grace Brethren Church, 457 U.S. 393, 102 S. Ct. 2498 (1982), for the proposition that a payment under protest with a suit for refund without interest is an adequate remedy under § 1341. The Grace Brethren Church opinion appears to have been cited in error. It states in footnote 31 that the California tax scheme under consideration in Grace Brethren Church required the state to pay interest. Respondents may have intended to cite Rosewell v. LaSalle National Bank, 450 U.S. 503, 101 S. Ct. 1221 (1981), which did involve a situation where the state refused to pay interest. Even Rosewell, however, does not support the respondents' position. In Rosewell, this Court noted that it appeared that the petitioner was able to assert in state court any "federal right" that she may have had to receive interest. 450 U.S. at 515, 101 S. Ct. 1230. In the case at hand, the Spencers clearly have an explicit federal right under §§ 1983 and 1988 to receive attorney's fees. The court below has refused to vindicate or even consider that right. Nothing in § 1341 can be said to sanction a refusal to vindicate a federal right specifically granted to the Spencers by Congress.

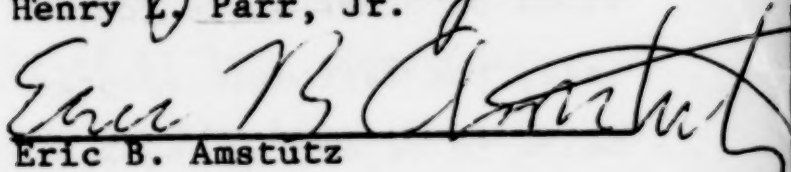
4. Respondents assert that the South Carolina Supreme Court has not refused broadly to entertain § 1983 actions. Respondents' brief at 3-4. Respondents, however, misconstrue the lower court's opinion. As pointed out on pages 12-13 and 16 of the petition for certiorari, the rationale adopted by the lower court closes South Carolina courts to most § 1983 actions. There is no language in the opinion limiting it to tax cases. Indeed, the court below pointed out that this Court "has not ruled that state courts are required to open their doors to § 1983 actions." Appendix to petition for certiorari at 10a. Even if the decision below were to be limited to tax cases, it would still conflict with opinions of this Court on issues of great significance.

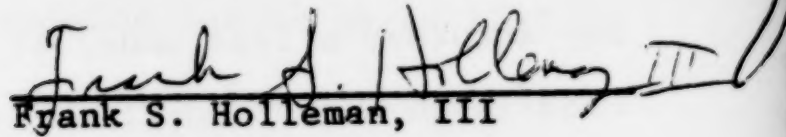
5. Respondents contend that the decision below does not conflict with decisions of other state courts. Nevertheless, the rationale adopted by the court below in rejecting the Spencers' claim for attorney's fees under §§ 1983 and 1988 is in direct conflict with that of the decisions discussed on pages 17-21 of the petition for certiorari. Even if the South Carolina Supreme Court had attempted to confine its opinion to tax cases, as did the courts in Georgia and Mississippi, its holding would conflict with decisions by the state courts which have recognized their constitutional duty to entertain claims under §§ 1983 and 1988.

For the reasons expressed above, the petitioners respectfully request that the

petition for certiorari be granted.


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